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EXAMINER

YOUNG, RACHEL T

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT EDWARD HENRY, PHILIP RODNEY
KWOK, PHILIP JOHN GUNNING, KARTHIKEYAN
SELVARAJAN, JAMES MORRISON, PAUL ANTHONY
GREEN, CHRIPSTOPHER KINGSLEY BLUNSDEN,
GREGORY ROBERT PEAKE, and CHRISTOPHER JOHN
BAXTER

Appeal 2015-001678
Application 11/902,509
Technology Center 3700

Before CHARLES N. GREENHUT, BRETT C. MARTIN, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

MARTIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

The Appellants appeal under 35 U.S.C. § 134 of the Examiner's rejection of claims 1–5, 7, 9, 10, 14–19, 38–42, 47–51, 57–70, and 72–86. Claims 10, 18, 19, 40–42, 50, 66–69, and 74–77 were withdrawn from consideration (Final Act. 2) and claims 85 and 86 stand objected to (Final Act. 5). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

THE INVENTION

The Appellants' claims are directed generally to “a headgear assembly for use in holding a patient interface such as a respiratory mask in position on a patient's face.” Spec. ¶ 1.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A headgear assembly for attachment to a patient interface that delivers breathable gas to a patient, comprising:
 - a headgear body adapted to fit to the patient's head and having connection portions adapted for connection to the patient interface;
 - means for adjusting said headgear body; and
 - means for indicating attainment of a desired adjustment setting of the headgear body, the means for indicating attainment of a desired adjustment setting of the headgear body being responsive to an adjustment parameter of the headgear body.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Allen	US 5,779,659	Jul. 14, 1998
Frater et al.	US 2002/0029780 A1	Mar. 14, 2002
Geist	US 2006/0042629 A1	Mar. 2, 2006

REJECTIONS

The Examiner made the following rejections:

Claims 1–5, 7, 9, 14–46, 38, 39, 47–49, 51, 57–61, 63, 65, 70, 72, and 84 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zollinger and Allen. Ans. 3.

Claims 62 and 64 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zollinger, Allen, and Potak. Ans. 11.

Claims 17 and 73 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zollinger, Allen, and Geist. Ans. 12.

Claims 78–83 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zollinger, Allen, and Frater. Ans. 13.

ANALYSIS

Obviousness over Zollinger and Allen

The Appellants’ arguments begin with an apparent misunderstanding of the rejection, stating that “the combination of Zollinger and Allen would have resulted in positioning a tension indicator (the tension indicator of Allen) at the lower central portion of the headgear (the central body portion 22).” App. Br. 9 (citing Final Act. 6, 20). The Examiner’s rejection on pages 6 and 20, however, does not refer to the central body portion 22 at all. The Examiner states that the modification would be to “Zollinger’s headgear at 44,” which refers to the entire headgear, and further specifically states that the indicating means would be located “between adjustable ends of headgear straps.” Ans. 3. Earlier in the rejection, the Examiner also makes clear that

the rejection specifically is referring to “means for adjusting the headgear body (straps 32, 24, 26, 28, and 30).” *Id.* The Examiner also refers to Zollinger’s indicating means 124, which are located on strap 32. *Id.* Accordingly, we understand the rejection to be referring to placing the indicating means of Allen on any of the aforementioned straps, including strap 32 as explicitly disclosed by Zollinger, not an unstated modification to body 22 as argued by the Appellants. As such, Appellants’ arguments 1 and 2 (App. Br. 8–12) are inapt.

The Appellants next argue, in relation to motivation, that the Examiner “bases her reasoning on the disclosure in Allen that different sized limbs require different tension settings” and that “a teaching that different sized limbs require different pressures for treating wounds does not equate to a teaching that different infant head sizes require different tension settings.” App. Br. 12. While this may be true, it is not dispositive of the issue. The Examiner has already correctly found that Zollinger teaches general tension indicators 124 on a headgear, but that Zollinger lacks the claimed indication of a desired tension. The only teaching in Allen of import here is that Allen not only teaches tension indicators, but also teaches indicators that show a specific indication of a desired level of tension. Thus, the rejection proposes to modify Zollinger’s general tension indicators with the enhancements of the more specific indicators taught in Allen. The results of such modification would meet the claim language at issue.

The Appellants also argue that “Zollinger fails to disclose a desired tension to secure the headgear to the infant’s head.” App. Br. 13. This argument misses the point of the combination. Zollinger discloses that overtightening is undesirable and provides indicators to alert a user to such overtightening. The Examiner then turns to Allen to supply an indication of

the degree of tightening and/or overtightening. Both Allen and Zollinger disclose tension indicators, and the Examiner merely uses what is known in the art as shown by Allen to provide an improvement to the existing indicators already found in Zollinger to further show a specific indication of a degree of tension. Accordingly, we disagree that anything was gleaned from Appellants' disclosure and agree with the Examiner that the rejection is soundly based in the prior art of record.

Lastly, the Appellants assert that Allen is non-analogous because it deals with "a bandage that exerts a predetermined pressure on a wound" while "claim 1 recites a headgear assembly for attachment to a patient interface that delivers breathable gas to a patient." The Appellants attempt to define the field of endeavor too narrowly and/or ignore that the analogous-art test also looks to "whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved." App. Br. 14. The Appellants define the problem of "achieving an ideal headgear tension, while at the same time avoiding leaks due to over tightening of the headgear." *Id.* We disagree with this overly narrow view of the problem. The independent claims say nothing about achieving an "ideal tension" nor about "avoiding leaks due to over tightening." The claims refer only to attainment of "a desired adjustment setting." Both Zollinger and Allen teach tension indicators and thus clearly deal with the more properly stated general problem found in the claims of utilizing tension indicators to indicate desired tension. As such, we find no error in the Examiner's rejection.

Regarding claims 38 and 47, as with claim 1, the Appellants' arguments are based upon a mischaracterization that the Examiner's modification is to the central body 22 rather than the straps as discussed

above. *See* App. Br. 17–20. Accordingly, we are not apprised of error in the rejection of claim 38. As to claims 57 and 70, the Appellants merely restate their arguments with respect to the independent claims and provide no specific argument regarding the limitations of these dependent claims. *See* App. Br. 20-22.

Accordingly, for the reasons stated above we affirm the Examiner’s rejection of claims 1–5, 7, 9, 14–46, 38, 39, 47–49, 51, 57–61, 63, 65, 70, 72, and 84.

Obviousness over Zollinger, Allen, and Frater

As the Appellants correctly state, claims 78 and 81 each require that “the desired patient interface force relates to a predetermined breathable gas pressure.” App. Br. 22. Claim 83 also recites a limitation relating the tension to gas pressure. The Examiner relies on Frater to supply this missing aspect and asserts that “Frater teaches a previously known fitting procedure of a mask in which maximum air pressure is supplied to the mask...in order to adjust the strap tension to the necessary level to prevent leaks at the maximum air pressure.” Final Act. 19.

Frater, however, has no tension indicators and therefore cannot provide the necessary link between mask tension as indicated by the indicators and gas pressure as claimed. Adding the tension indicators as suggested by the Examiner would still only relate to patient comfort as the issue relating to gas pressure is merely a threshold at which the mask would properly operate, which would be independent of the tension indicators. We see nothing in Frater to further link gas pressure to the desired tension. Furthermore, we agree with the Appellants that Frater is actually concerned with “providing a component (e.g., gusset) on the patient interface to decouple forces that could dislodge the patient interface from the patient’s

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face.” App. Br. 24. Accordingly, “Frater does not recognize a need for providing a tension indicator” and “the solution of Frater obviates the need for such an indicator.” *Id.* As such we do not sustain the Examiner’s rejection of claims 78–83.

DECISION

For the above reasons, we AFFIRM the Examiner’s decision to reject claims 1–5, 7, 9, 14–46, 38, 39, 47–49, 51, 57–61, 63, 65, 70, 72, and 84 and REVERSE the Examiner’s rejection of claims 78–83.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2009).

AFFIRMED-IN-PART